

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petitions

of

FASHION MERCHANTS ASSOCIATES, INC.

for redetermination of deficiencies
of franchise tax under Article 9-A
of the tax law for the fiscal years
ended February 29, 1968 to February 28,
1971, inclusive.

Fashion Merchants Associates, Inc. having filed petitions for redetermination of deficiencies, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Peter Feldman, Vice-President of the corporation, and Isidore Feldman, Certified Public Accountant, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Fashion Merchants Associates, Inc. filed a combined return on behalf of itself and a wholly-owned subsidiary, Diversified Foods, Inc., for the fiscal year ended 2/29/68. A three company combined return, including another wholly-owned subsidiary, Weiner Enterprises, Inc., was filed for the fiscal years ended 2/28/69 through 2/28/71.

(2) Based on a field audit examination, the Corporation Tax Bureau issued statements of audit adjustment and notices of deficiency dated 8/15/72 computed as follows:

Fiscal Year Ended 2/29/68

Combined business capital	\$320,048.31
Tax at 1.04 mills	332.85
Subsidiary capital	2,572,500.00
Tax at .52 mills	1,337.70
Total tax	1,670.55
Tax per report	461.90
Deficiency	1,208.65

Fiscal Year Ended 2/28/69

Combined business capital	\$306,044.27
Tax at 1.25 mills	382.56
Subsidiary capital	5,529,000.00
Tax at .625 mills	3,455.63
Total tax	3,838.19
Tax per report	533.09
Deficiency	3,305.10

Fiscal Year Ended 2/28/70

Combined business capital	330,378.92
Tax at 1.25 mills	412.97
Subsidiary capital	8,195,000.00
Tax at .625 mills	5,121.88
Total tax	5,534.85
Tax per report	475.29
Deficiency	5,059.56

Fiscal Year Ended 2/28/71

Combined business capital	320,004.02
Tax at 1.31 mills	419.21
Subsidiary capital	8,210,000.00
Tax at .654 mills	5,369.34
Total tax	5,788.35
Tax per report	307.59
Deficiency	5,480.96

The issue involved is the amount of subsidiary capital subject to tax.

(3) Diversified Foods, Inc. and Weiner Enterprises, Inc.

acquired wholly-owned subsidiaries during the years involved for purchase prices set up on their respective books as follows:

Diversified Foods, Inc.

<u>Purchase Price</u>			
<u>Fiscal Year Ended</u>	<u>Beginning of Year</u>	<u>End of Year</u>	<u>Average Price</u>
2/29/68	\$2,450,000	\$2,695,000	\$2,572,500
2/28/69	2,695,000	2,695,000	2,695,000
2/28/70	2,695,000	2,695,000	2,695,000
2/28/71	2,695,000	2,695,000	2,695,000

Weiner Enterprises, Inc.

<u>Purchase Price</u>			
<u>Fiscal Year Ended</u>	<u>Beginning of Year</u>	<u>End of Year</u>	<u>Average Price</u>
2/29/68	-0-	168,000	84,000
2/28/69	168,000	5,500,000	2,834,000
2/28/70	5,500,000	5,500,000	5,500,000
2/28/71	5,500,000	5,500,000	5,500,000

The computation of subsidiary capital subject to tax was based on the respective average purchase prices indicated above.

(4) A purchase agreement entered into by Diversified Foods, Inc. on February 27, 1967 for the acquisition of subsidiaries provides that a balance due of \$2,250,000 is payable over a ten year period in varying quarterly installments, plus interest at the rate of 8% per annum.

A purchase agreement entered into by Weiner Enterprises, Inc. on September 15, 1967 for the acquisition of subsidiaries provides that a balance due of \$4,850,000 is payable over a ten year period in varying quarterly installments, plus interest at the rate of 8% per annum.

(5) Section 208.4 of the tax law reads in part:

"The term 'subsidiary capital' means investments in the stock of subsidiaries and any indebtedness from subsidiaries ... provided, however, that, in the discretion of the tax commission, there shall be deducted from subsidiary capital any liabilities payable by their terms on demand or within one year from the date incurred ... which are attributable to subsidiary capital;"

Sections 3.53, 3.34 and 3.35 of Ruling of the State Tax Commission dated March 14, 1962 read in part:

"3.53. Determination of Subsidiary Capital. The amount of subsidiary capital of the taxpayer is determined by taking the average fair market value during the period covered by the report of all assets of the taxpayer which constitute subsidiary capital ... less, in the discretion of the State Tax Commission, certain current liabilities. Average fair market value is determined in the manner prescribed in Sections 3.34 and 3.35.

"3.34. Fair Market Value. The fair market value of any asset owned by the taxpayer is the price at which a willing seller, not compelled to sell, will sell and a willing purchaser, not compelled to buy, will buy ...

"3.35. Average Fair Market Value. In determining average fair market value, due allowance must be made for variations in the amount of assets held by the taxpayer during the period covered by the report ..."

The State Tax Commission hereby

DECIDES:

(1) Since the subsidiaries were of recent acquisition, the valuation of subsidiary capital was properly based on the purchase price, in accordance with Section 3.34 of the Ruling indicated at (5) above. The purchase agreements provided for balances payable in installments over a ten year period and accordingly, the taxpayer was not entitled to any deduction for current liabilities in arriving at the amount of subsidiary capital subject to tax.


(2) The notices of deficiencies are affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 19th Day of April 1974.

STATE TAX COMMISSION


President


Commissioner


Commissioner